

Case No. SCSL-2004-16-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU

FRIDAY, 29 APRIL 2005  
10.40 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Matthias Reuss
For the Registry:	Ms Maureen Edmonds
For the Prosecution:	Ms Lesley Taylor Ms Melissa Pack Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Ms Simone Monasebian Ms Claire Carlton-Hanciles Mr Ibrahim Mansaray
For the accused Alex Tamba Brima:	Mr Kevin Metzger Mr Kojo Graham
For the accused Brima Bazy Kamara:	Mr Wilbert Harris Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanu:	Ms Karlijn van der Voort

Friday 29 April 2005

2 [TB290405A-SGH]

3 [The accused not present]

4 [Open session]

10:30:43 5 [Upon commencing at 10.40 a.m.]

PRESIDING JUDGE: Good morning. I note that the accused appear  
7 not to be in court. Madam Court Attendant, has any reason been  
8 forwarded by Detention for the non-appearance of the accused? Does  
9 somebody wish to --

10:42:34 10 MR HARRIS: Yes, may it please you. I have, together with  
11 my learned friend, spent a substantial period of time in the  
12 custody suite this morning, and then the Principal Defender, who  
13 is with us today, has also attended the facility in the hope that  
14 together or all three would persuade the detainees to attend.

10:43:19 15 Only a few days ago I read to you a letter which they had indeed  
16 given to me after the adjournment. The contents of that letter  
17 demonstrate a measure of nervousness on the one hand, but a view  
18 that they had formed that they were not being -- their case had  
19 not been given the consideration that it ought to. I am trying

10:44:02 20 not to use the words that they don't feel they get or are  
21 receiving justice. However, this morning they have formed the  
22 view that in their judgment these things arise. Firstly, they  
23 take the view that a decision has already been reached as to  
24 their guilt and therefore whatever is happening here is simply a

10:44:32 25 process which does not include them. Secondly, that they has  
26 been a systematic abuse - systematic is my word - abuse of their  
27 rights.

28 PRESIDING JUDGE: Which rights, Mr Harris?

29 MR HARRIS: I'm sorry?

1           PRESIDING JUDGE: Which right?

2           MR HARRIS: The right to a fair trial. And added to that,  
3 their right to a fair trial, as they put it, includes the fact  
4 that they have not been able to see, in the public gallery of  
10:45:46 5 this Court, their wives. And they went on to add to that this  
6 morning the fact that they have not had the proper service of an  
7 investigator - and I think they are here referring to, honesty  
8 compels me to say, they are referring to the investigator who has  
9 been suspended - I am not sure if that is a correct word. They  
10:46:25 10 have taken the view in addition that when submissions are made on  
11 behalf of the Defence, namely them, it seems that a sufficient  
12 consideration is not being given to those submissions. They have  
13 formed a view that every - their words, I use it now - everything  
14 the Prosecution wants they seem to get. However, the final nail  
10:47:11 15 in all this worry they have - and they describe it as a great  
16 degree of stress - came yesterday when, their words, there was an  
17 attack on their counsel by the Trial Chamber. That enabled them  
18 to come to the conclusion that being here is really a waste of  
19 their time. Together with my learned friend, we sought to  
10:47:55 20 instill on them a different view and sought to persuade them in  
21 that manner or to the position where, as I said to you when the  
22 trial re-opened early on this week, which we were able to do.  
23 However, I was told that the measure of persuasion which was  
24 effective earlier on is now as dead as a dodo. They ask if I  
10:48:40 25 would request the attendance of the Principal Defender. That I  
26 did and with a great degree of speed, stopping whatever she was  
27 doing at that time, she made haste to the facility.

28           PRESIDING JUDGE: Mr Harris, I am grateful for your  
29 information, but I feel that it is unnecessary for you to inform

1 the Court of discussions between yourself and your clients. I  
2 accept that you have indicated to us that you have instilled in  
3 them and I accept that counsel has done all that was proper in  
4 the circumstances, but to go further I feel would be to encroach  
10:49:33 5 upon the relationship between you and your client. We note that.

6 MR HARRIS: Thank you.

7 PRESIDING JUDGE: Thank you, Mr Harris.

8 MR HARRIS: I have no intention of doing that. All I am  
9 intending to do is to tell you exactly what they have asked me to  
10:49:46 10 tell you.

11 PRESIDING JUDGE: Yes, indeed, I have recorded it.

12 MR HARRIS: The Principal Defender, as I was saying, before  
13 I was so properly interrupted, visited them and she no doubt will  
14 tell you the result of her visit.

10:50:34 15 PRESIDING JUDGE: I am grateful for the presence of the  
16 Principal Defender and if the Principal Defender wishes to add  
17 anything we would be grateful to hear it. However, I restate  
18 that we do not intend to encroach into the confidentialities  
19 between counsel and their clients. Thank you.

10:50:56 20 MS MONASEBIAN: Your Honours, if I may, I will not  
21 elaborate on what was said by Mr Harris, other than to say it  
22 represents the same comments that were made to me. But if  
23 Your Honours would allow me at this point, or perhaps at a later  
24 point when Your Honours deem it more appropriate, to address on  
10:51:08 25 one thing raised by Your Honours, particularly Judge Lussick  
26 yesterday with regard to the code of conduct, I think it would be  
27 constructive for all of us to clarify that position because a  
28 member of my office opined on it yesterday and I think it should  
29 be clarified to some extent. If Your Honours would allow me to

1 address now or later on I would prefer to do so.

2 PRESIDING JUDGE: Thank you. Let me consult with my  
3 learned colleagues. Madam Principal Defender, we are grateful  
4 for the indication you have given us. As you are aware, the  
10:53:45 5 Court has issued a warning pursuant to Rule 46(A). If the matter  
6 arises again then we will gladly call upon you. In the interim,  
7 since you have an opinion, it would be of great benefit to the  
8 Chamber if that could be sent to us. If it is in writing already  
9 we would be glad to receive it. Thank you.

10:54:12 10 In the meantime, we note that -- sorry, thank you. We have  
11 heard Mr Harris's explanation as to the non-attendance of the  
12 detainees. We accept that they were properly and fully advised  
13 of their rights and we have no doubt that to adopt Mr Harris's  
14 words they were given a view. We have no reason to resile in any  
10:54:42 15 way from that. We therefore accept that properly advised and  
16 fully advised they have waived their rights, pursuant to  
17 Rule 60(B), and they have waived their rights to be present.  
18 Therefore the matter will proceed.

19 [At this point in the proceedings, a portion of  
20 the transcript, pages 6 to 42, was extracted  
21 and sealed under separate cover, as the session  
22 was heard in camera.]

23 [Whereupon the hearing adjourned at 12.38 p.m.,  
24 to be reconvened on Monday, the 2nd day of May,  
25 2005, at 9.15 a.m.]

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